IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1198 OF 2003

The State of Maharashtra,
(Through Chatushringi Police
Station, Pune) ...Appellant

Versus

Narayan Shankar Pable & Ors. ...Respondents.

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Mr. M. S. Mhambray, A.P.P. for State.

Mr. Uday Warunjikar with Mr. Bandal Balasaheb with Pravin Mane, Advocate for Respondents.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 20TH JUNE, 2005

P.C.: -

1. The appellant i.e. the State of Maharashtra has challenged the judgment and order dated 17.3.2003 passed by the learned J.M.F.C. Court No.9. Pune in Regular Criminal Case No. 167 of 2000. By the said judgment and order the learned Magistrate acquitted all the accused persons i.e. the respondents herein of the offence under Section 323, 324, 506 (II) r.w. 34 of I.P.C. Being aggrieved by the said judgment and order, this appeal has been preferred.

2. I have heard Shri. M.S. Mhambray, the learned A.P.P. for the appellant i.e. the State of

Maharashtra and Mr. Uday Warunjikar with Mr. Bandal Balasaheb with Mr. Pravin Mane, the learned advocate for respondent Nos. 1 to 3 i.e. the original accused Nos. 1 to 3. I have carefully perused the judgment and order of the learned Magistrate as well as the record pertaining to the present case. After carefully considering the matter, in my opinion, this appeal deserves to be dismissed.

3. It is the prosecution case that on 22.11.2000 at about 11.30 p.m. when the complainant closed his shop and was about to leave, there was some oral altercations between the complainant and his brother Sanjay i.e. the respondent No.2. At that time, the respondent No.2 and respondent No.3 Ganesh inflicted a blow of lathi on the complainant and his father and threw chilli powder in the eyes of the complainant. The complainant started shouting. Thereafter, the complainant was taken to the hospital.

4. In the F.I.R. (Exh.28) the complainant has stated that the accused Nos. 2 and 3 assaulted him with stick. Before the Court he has stated that only the accused No.3 gave a stick blow. As far as the accused No.2 is concerned, before the Court, the complainant has stated that the accused No.2 beat him with hands, however, this fact is found missing in the F.I.R.. Obviously, in such case no such reliance

can be placed on such evidence.

5. In respect of assault it is seen that the complainant only sustained one injury on the head. The complainant was examined by P.W.5 Dr. Manish Vibhute as well as P.W.9 Dr. Satish Karnik. Dr. Vibhute has stated that the head injury was a clean lacerated wound on the contrary P.W.9 Dr. Karnik has stated that the injury was contused Lacerated wound. It is the specific case of the complainant that he was assaulted with stick. Obviously the stick cannot cause clean lacerated wound as observed by Dr. Vibhute. As to the nature of the injury also there is discrepancy. According to P.W.5 Dr. Vibhute the injury was grievous, whereas according to P.W.9 Dr. Karnik the injury was simple in nature. Dr. Vibhute was the doctor who first examined the complainant. He examined the wound sustained by the complainant and put three stitches thereon. Thereafter the complainant was examined by Dr. Karnik who has stated that the injury was bone deep. The observations of Dr. Karnik that the injury was bone deep cannot be relied upon because he examined the complainant after the wound was stitched. Once the wound was stitched it could not have been possible for Dr. Karnik to examine the depth of the injury. It is pertinent to note that both the doctors have admitted that the injury sustained by the complainant

could have been caused by fall. In the light of the variance in the evidence of two doctors who examined the complainant, there appears to be considerable doubt whether the injury was sustained by the complainant by stick blow at the hands of the accused person or not.

6. It is further the prosecution case that the accused person had thrown chilli powder on the person of the complainant as well as in his eyes. However, neither the panch witness nor the investigating officer noticed any chilli powder on the clothes of the complainant or at the scene of the incident. Nor does any C.A. report state about presence of chilli powder. It is true that P.W.5 Dr. Vibhute has mentioned that the eyes of the witness were looking red, however, in the certificate issued by him it is not mentioned anywhere that the eyes of the complainant were looking red. In such case it would not be safe to rely on the uncorroborated version of P.W.5 Dr. Vibhute.

7. It is the prosecution case that the injury was also caused to P.W.2 Sayali Pable i.e. the wife of the complainant. It is pertinent to note that the complainant has not stated about this either in his F.I.R. or in his evidence before the Court that his wife sustained injury. It is the prosecution case

that Sayali has sustained blunt injury on the left side of her jaw. However, no case paper have been produced to show that such injury was indeed sustained by her. Moreover, it is case of the prosecution that P.W.2 Sayali came running to the spot on hearing the shouts of her husband i.e. the complainant P.W.1 Vijay Pable. It is pertinent to note that the complainant has not stated that he has raised any shouts, on the contrary he has specifically stated that he did not shout loudly so as to attract the attention of neighbours. Thus, in such case the prosecution story that P.W.2 Sayali came running to the spot on hearing shouts of her husband appears to be doubtful.

8. Besides the two eye witnesses mentioned above, i.e. P.W.1 Vijay Pable and P.W.2 Sayali Pable, there are two other eye witnesses i.e. P.W.4 Laxman Yadav and P.W.6 Pradip Bahirat. Both these witnesses are friends of the complainant. As far as these two witnesses are concerned i.e. P.W.4 Laxman Yadav and P.W.6 Pradip Bahirat the complainant has not stated anywhere about their presence. Moreover, it is the contention of P.W.4 Laxman Yadav that he was present in the shop of the complainant when the incident took place. However, it is pertinent to note that at the relevant time the shop of the complainant was closed. Hence, it could not have been possible that P.W.4

Laxman Yadav was present in the shop at the said time. As far as P.W.6 Pradip Bahirat is concerned, as stated earlier the complainant has not stated anywhere that he was present on the spot. He is a close friend of the complainant. Looking to the evidence of the complainant and other evidence on record, the presence of P.W.6 Pradip Bahirat on the spot also appears to be doubtful.

9. All these aspects have been considered by the learned Sessions Judge and thereafter he acquitted the accused persons. Considering the evidence on record, the view taken by the learned J.M.F.C. appears to be a reasonable and possible view and hence no interference is called for.

10. Criminal Appeal is dismissed.

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